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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/014,991

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Gregory E. Sancoff

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EXAMINER

BUI, VY Q

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

03/30/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/014,991	Applicant(s) SANCOFF ET AL.	
	Examiner Vy Q. Bui	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 68-75 and 116-120 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 68-75, 116-120 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 68-69, 71-75, 116, 119-120 are rejected under 35 U.S.C. 102(b) as anticipated by Schweizer-3,842,840.

As to claims 68-69, 71-72, 116, 119-120, Schweizer-'840 (F. 1-8) discloses a suture device 10 comprising a drive mechanism (including needle 62 and lower jaw 14), a suture wire supply cartridge assembly (including removable cartridge/tube 48, groove 56), suture wire 54, suture wire holder/bobbin 52, elongated suture wire guide defining a guide pathway formed by tube 48, groove 56 and suture wire guide support 26/41. The guide path way includes a proximal portion having drive openings as recited in the claims.

As indicated in the reproduced Fig. 6 below, drive openings are defined by outlet ports of needle 62 through suture wire guide support 26/41, outlet port of tube 48, and ports of groove 56.

Notice that tube 48 has a delivery opening where suture 54 coming from bobbin 52 to tube 48 and the drive openings expose the suture wire to needle 62 and lower jaw 14 substantially as recited in the claims.

As to claim 70, suture wire 54 extends through/beyond suture wire support 26/41 (Fig. 4).

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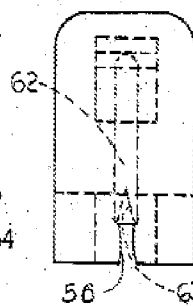
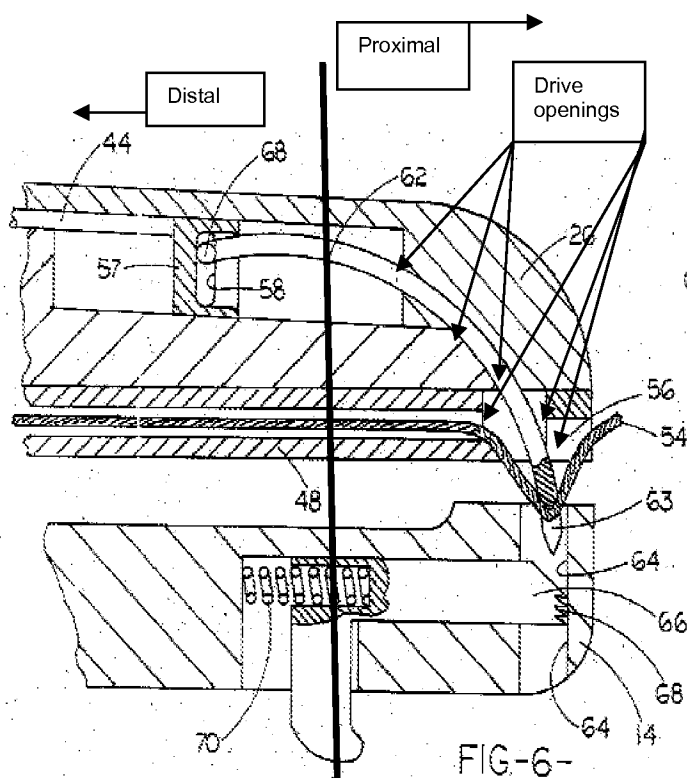
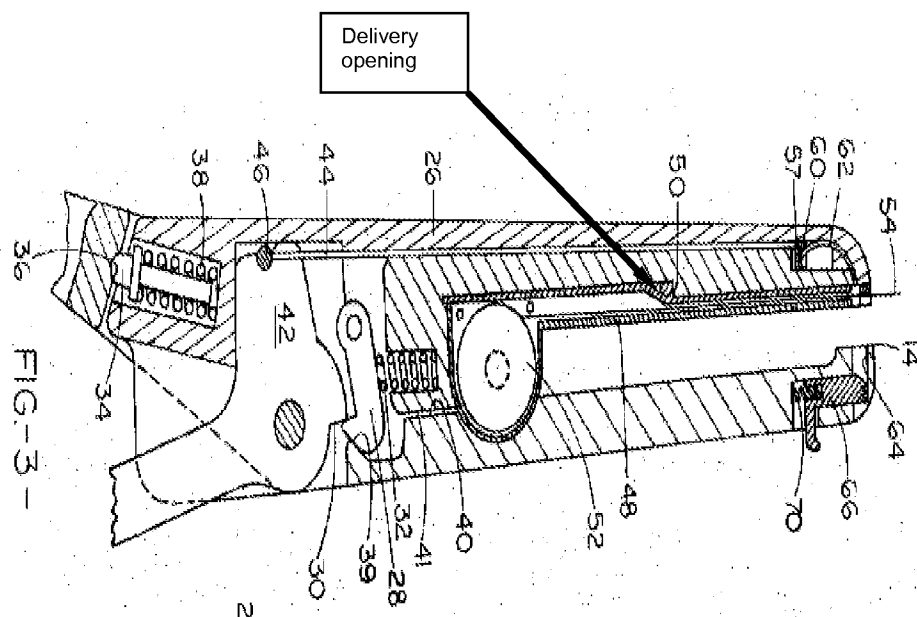


FIG-5-

As to claims 73, 75, Schweizer-'840 (F. 3-4 and 6) discloses a suture device 10 having a supply cartridge comprising suture wire 54, guide tube 48, guide tube support assembly including jaw 26/41 and groove 56. Guide tube support assembly including jaw 26/41 and groove 56 has opposed lateral openings (see above reproduced Fig. 6) .

As to claim 74, please see Fig. 5 of Schweizer-'840.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

As to claims 117-118, a suture wire of a metal such as a steel is well known for the strength and stiffness of the suture wire. It would have been obvious to one of ordinary skill in the art to provide a suture wire of steel for Schweizer-'840 device as this would provide more strength and stiffness to the suture wire.

Response to Arguments

Applicant's arguments filed 11/12/2009 have been fully considered but they are not persuasive.

1. As to claim 68, the applicant (Remarks, page 2, paper 11/12/2009) argued that: "The Office Action states that Schweizer includes drive openings defined by outlet ports of needle 62, through suture wire guide support 26/41. Applicant respectfully points out though that these features, as identified by reference characters 26 and 41, and the "drive openings" as shown in the annotated figure in the Office Action, are not part of the cartridge in Schweizer. For at least

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this reason, Schweizer fails to teach or disclose a delivery opening, as recited in claim 68, such that the rejection is improper.”.

It appears that the applicant considered the recitation “suture wire supply cartridge” in claim 68 as a separate unit and detachable from the suturing instrument.

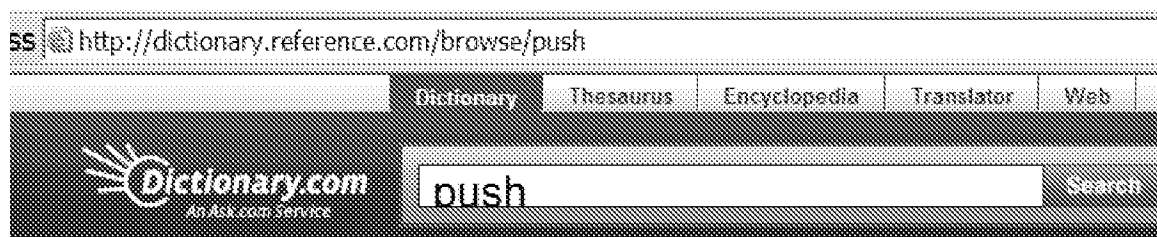
However, claim 68 does not require the cartridge being a separate unit and detachable from the suturing instrument. Therefore, it is reasonable to interpret broadly that elements 26/41 are also considered as included in the cartridge of claim 68.

2. As to claim 68, the applicant (Remarks, page 2, paper 11/12/2009) argued that: “The Office Action also ignores the fact that claim 68 recites suture wire is drawn from the holder and is pushed forward of the drive openings along the guide pathway through the tube and through the delivery opening. The interpretation set forth in the Office Action appears to have suture wire moving toward structure associated with the holder, as claimed.”.

It appears that the applicant considered the recitation “push” in claim 68 as an action to apply a force distally of the delivery openings in a direction from the suture holder (distal end of the above drawings) to the delivery openings to move “the suture wire” forwardly (or proximally as shown in the above drawings).

However, the recitation “push”, by definition as copied below from www.dictionary.com , does not require anything more than “to move (a suture wire) in a specific way by exerting force” (definition 2, see below) .

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—verb (used with object)

1. to press upon or against (a thing) with force in order to move it away.
2. to move (something) in a specified way by exerting force; shove; drive: *to push something aside*; *to push the door open*.
3. to effect or accomplish by thrusting obstacles aside: *to push one's way through the crowd*.
4. to cause to extend or project; thrust.
5. to press or urge to some action or course: *His mother pushed him to get a job*.
6. to press (an action, proposal, etc.) with energy and insistence: *to push a bill through Congress*.
7. to carry (an action or thing) toward a conclusion or extreme: *She pushed the project to completion*.
8. to press the adoption, use, sale, etc., of: *to push inferior merchandise on customers*.
9. to press or bear hard upon, as in dealings with someone: *The prosecutor pushed him for an answer*.
10. to put into difficulties because of the lack of something specified (usually fol. by *for*): *to be pushed for time*.
11. *Slang*. to peddle (illicit drugs).
12. *Informal*. to be approaching a specific age, speed, or the like: *The maestro is pushing ninety-two*.
13. *Photography*. to modify (film processing) to compensate for underexposure.

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3. As to claim 73, the applicant (Remarks, page 3, paper 11/12/2009) argued that: "Independent claim 68 recites a suture wire supply cartridge for a suturing instrument. The cartridge includes a guide tube support connected between a housing and a guide tube. The Office Action does not appear to state any structure of Schweizer that corresponds to a guide robe support that connects a housing a guide robe, as recited by claim 73."

On the contrary, the "Office Action" (paper 5/12/2009, page 4) clearly indicated "the guide tube support assembly including jaw 26/41". Again, this is reasonable to interpret broadly that jaw 26/41 as a part of "the suture wire supply cartridge (assembly)", because there is nothing in claim 73 to require that the suture wire cartridge is separate and detachable from the suturing instrument.

It appears that the applicant is attempting to apply a specific meaning of the recitation "push" to define the claimed invention. However, this recitation does not specifically provide any structural limitation to the claimed invention to further distinguish the present invention to the Schweizer-'840 reference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/
Primary Examiner, Art Unit 3773